

[Submitting Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA
ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR

**AGENDA AND JOINT STATEMENT
FOR JANUARY 26, 2024, CASE
MANAGEMENT CONFERENCE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to Case Management Order No. 1 (ECF No. 75), the Parties submit this agenda and joint statement in advance of the January 26, 2024, Case Management Conference (“CMC”).

I. Update on Motions to Dismiss

As of the filing of this statement, motion to dismiss briefing has concluded for the Personal Injury Plaintiffs’ priority claims. This Court entered an Order granting in part and denying in part those motions to dismiss (“First MTD Order”). ECF No. 430. At the November 16, 2023 Case Management conference, this Court ordered additional motion to dismiss briefing to proceed on four “tracks,” *see* ECF No. 451:

- Track 1: The State Attorneys General Complaint, as well as Claims 7, 8, and 9 of the Personal Injury Plaintiffs’ Master Amended Complaint (Plaintiffs’ Consumer Protection and Misrepresentation Claims). On December 22, 2023, Meta moved to

dismiss the Multistate Attorneys General Complaint, the Florida Attorney General Complaint,¹ and the Personal Injury Plaintiffs' Consumer Protection and Misrepresentation Claims. ECF No. 517. Defendants YouTube, Snap, and TikTok joined Meta's motion to dismiss Count 7 of the Personal Injury Plaintiffs' Amended Master Complaint. ECF No. 519. Oppositions are due February 5, 2024 and Defendants' reply is due February 26, 2024. ECF No. 450.

- Track 2: [Remaining] Personal Injury Plaintiffs' Non-Priority Claims.
 - On December 22, 2023, Defendants jointly moved to dismiss the Personal Injury Plaintiffs' remaining non-priority claims (i.e., besides Counts 7, 8, and 9). ECF No. 516. The Personal Injury Plaintiffs' opposition is due February 5, 2024 and Defendants' reply is due February 26, 2024. ECF No. 450.
 - On December 15, 2023, the Personal Injury Plaintiffs filed a Second Amended Master Complaint ("SAC") withdrawing Counts 6 (negligent undertaking), 11 (sex trafficking), and 13 and 15 (CSAM) as to all Defendants, and Counts 12 and 14 (the remaining CSAM claims) as to all Defendants except Meta, without prejudice to individual plaintiffs re-asserting those claims in Short-Form Complaints (SFCs) due by January 2. Dkts. 494, 479. On January 2, 2024, individual plaintiffs Alice Doe, K.S., and D.H. filed amended SFCs in which they reasserted Counts 12 and 14 against Snap. Snap moved to dismiss those counts on January 12, 2024. Individual plaintiffs Alice Doe, K.S., and D.H. may file a consolidated opposition by February 5, 2024. ECF No. 479. Snap's reply in support of this motion to dismiss would be due by February 26, 2024. ECF No. 479.

¹ The Florida Attorney General Complaint was transferred to the MDL on November 8, 2023. ECF No. 416.

- Track 3: School District Master Complaint. On December 18, 2023, the School District Plaintiffs filed their Master Complaint. ECF No. 504. Defendants will move to dismiss that Master Complaint by February 5, 2024. ECF No. 451. The School District Plaintiffs will file their opposition to the motion by March 4, 2024. ECF No. 451. Defendants will then file a reply by March 25, 2024. ECF No. 451.
- Track 4: Personal Injury Plaintiffs' Claims Against Mark Zuckerberg in His Individual Capacity. On December 22, 2023, Defendant Mark Zuckerberg moved to dismiss the Personal Injury Plaintiffs' claims against him in his individual capacity. ECF No. 518. The Personal Injury Plaintiffs' opposition is due January 16, 2024 and Mr. Zuckerberg's reply is due January 23, 2024. ECF No. 451.

II. Briefing on Defendants' § 1292(b) Motion

On December 12, 2023, Defendants filed a motion to certify for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) the Court's First MTD Order. ECF No. 473. On January 9, 2024, the Personal Injury Plaintiffs filed an opposition to Defendants' 1292(b) motion. ECF No. 527. On January 9, 2024, the State Attorneys General also filed an opposition. ECF No. 526. Defendants' reply is due January 19, 2024, and the Court has set argument on the motion during the January 26, 2024 CMC. ECF No. 479.

III. General Causation Letter Briefs

On December 13, 2023, the Court granted Defendants leave to file letter briefs on strategies to facilitate early resolution of the issue of general causation relative to the Personal Injury Plaintiffs' Master Complaint. *See* ECF No. 479 (Case Management Order No. 7) at 3. Pursuant to Case Management Order No. 7 (*id.*), on January 15, 2024, the Personal Injury Plaintiffs and Defendants filed opening letter briefs on their respective positions on prioritizing general causation for early resolution (ECF Nos. 537 (Pls), 536 (Defs)), and on January 19, 2024, they filed their rebuttal letter briefs. Based on the letter briefs, the State Attorneys General reserve the right to request leave from the Court to file a response.

1 **IV. TikTok Motion to Seal Redacted Material in Individual Plaintiffs' Second Amended**
 2 **Master Complaint and Local Government and School District Plaintiffs' Master**
 3 **Complaint**

4 The Personal Injury Plaintiffs and TikTok Defendants are meeting and conferring
 5 regarding the appropriateness of leaving under seal certain portions of the complaint filed by the
 6 Utah Attorney General and attached to the Personal Injury Plaintiffs' Amended Master
 7 Complaint. If agreement is not reached, letter briefing will be fully submitted by Tuesday,
 8 January 23.

9 **V. Matters Before Magistrate Judge Kang**

10 The Parties' next Discovery Management Conference with Magistrate Judge Kang is
 11 scheduled for January 25, 2024. Pursuant to Discovery Management Order No. 1 (ECF No. 503),
 12 by separate cover today (January 19, 2024), the Parties will submit a joint status report and
 13 proposed discovery plans to Magistrate Judge Kang.

14 At the guidance of Magistrate Judge Kang (*see* Hr'g Tr. 62:2-9 (Dec. 14, 2023)), the
 15 Plaintiffs wish to discuss whether the Court intends to impose a deadline to start or finish
 16 Alternative Dispute Resolution.

17 **VI. Bellwether Protocol(s)**

18 As outlined in the Parties' joint report to Judge Kang, the Parties seek guidance on the
 19 Court's desired process and timing for submission of proposed bellwether protocol(s).

20 **VII. Personal Injury Plaintiff Fact Sheet and Implementation Order**

21 On December 14, 2023, Judge Kuhl entered a Personal Injury Plaintiff Fact Sheet ("PFS")
 22 and PFS Implementation Order, along with a related "User Account Information Order" and
 23 associated forms. The Personal Injury Plaintiffs and Defendants will be submitting these orders
 24 (conformed as appropriate for the MDL) to the Court soon.

25 **VIII. Short Form Complaint Implementation Orders**

26 Pursuant to CMO No. 7 (ECF No. 479), on December 28, 2023, the Personal Injury
 27 Plaintiffs and Defendants filed a proposed stipulated implementation order governing the
 28 adoption of the Second Amended Master Complaint (Personal Injury) that also included an

1 amended template Short Form Complaint (“SFC”).² ECF No. 520. On January 5, 2024, the
 2 Local Government Entity and School District Plaintiffs and Defendants submitted their stipulated
 3 and proposed implementation order governing adoption of the Master Complaint (Local
 4 Government and School District), including a proposed template Short Form Complaint, for the
 5 Court’s consideration. *See* ECF No. 524.

6 Since filing the SFC implementation orders, the Personal Injury and Local Government
 7 and School District (“PI/SD”) Plaintiffs and Defendants have discussed use of MDL Centrality—
 8 the platform the Parties will use for fact sheets—for SFC service. To that end, the PI/SD
 9 Plaintiffs and Defendants intend to file a revised SFC implementation orders for the Court’s
 10 consideration.

11 **IX. Pending Motion to Remand**

12 **Youngers Plaintiffs’ Position:**

13 In member case *Youngers et al., v. Meta Platforms, Inc.*, 4:23-cv-00547, the Plaintiffs
 14 filed a motion to remand. ECF No. 58. Following meet and confer, the *Youngers* Plaintiffs
 15 withdrew the motion without prejudice to its refiling as directed by the Court. ECF No. 59. The
 16 *Youngers* Plaintiffs request leave to file the motion and that the Court set a briefing schedule for
 17 it..

18 The *Youngers* Plaintiffs contend that this case was improperly removed and then
 19 transferred to the MDL before the District Court acted on the Motion to Remand below. The
 20 *Youngers* Plaintiffs contend that this Court setting a schedule for briefing, hearing, and ruling on a
 21 Motion to Remand would be appropriate and efficient. As Defendants admit, the *Youngers* case
 22 is the only one in the entire MDL for which remand has been sought. There are no other remand
 23

24 ² During the proposed order’s pendency, there appears to have been some confusion among
 25 Plaintiffs regarding which Short Form Complaint template to utilize. For example, three
 26 amended Short Form Complaints filed on January 2, 2024, utilize the newer amended template
 27 (*see* the Short Form Complaints filed in *D.H. v. Meta Platforms, Inc.*, et al., Case No. 4:22-cv-
 28 4888-YGR; *K.S. v. Meta Platforms, Inc.*, et al., Case No. 4:23-cv-05146-YGR; and “Alice” Doe
v. Meta Platforms, Inc., et al., Case No. 4:23-cv-04719-YGR), whereas another Short Form
 Complaint filed on January 8, 2024 utilizes the prior template (*see* Short Form Complaint filed in
Robertson v. Meta Platforms, Inc., et al., Case No. 4:24-cv-00127).

1 motions currently pending with overlapping issues that might arguably benefit from the Court's
 2 consideration of them as a group. Defendants contend that keeping this case in the MDL would
 3 enhance efficiency. However, they have not identified what those efficiencies would be.
 4 Delaying the resolution of the *Youngers* Plaintiffs' remand motion would not promote
 5 efficiency. It would only serve to deny the *Youngers* Plaintiffs the appropriate forum to resolve
 6 their claims. The most efficient course of action would be for the Court to consider and rule on
 7 this sole remand motion and allow a New Mexico state court to resolve the *Youngers* Plaintiffs'
 8 claims arising from New Mexico state law. For these reasons, the *Youngers* Plaintiffs contend the
 9 *Youngers* case should be treated differently than the other cases pending in the MDL.

10 **Defendants' Position:**

11 *Youngers* was originally filed in New Mexico state court. Defendants removed the case to
 12 federal court,³ and the JPML transferred the case to this MDL while Plaintiffs' motion to remand
 13 was pending. Eleven months later, on December 22, 2023, the *Youngers* Plaintiffs re-filed their
 14 motion to remand in these proceedings. After Defendants informed Plaintiffs' counsel that the
 15 remand motion was improper under this Court's initial case management order, *see* ECF No. 75,
 16 they withdrew their motion. Plaintiffs now seek leave to re-file that motion.

17 MDL courts typically defer resolution of remand motions pending resolution of more
 18 cross-cutting issues, because "there are efficiencies to be gained through the processes underway
 19 in [MDLs] for all cases, regardless of when they might be remanded." *E.g., In re: Juul Labs,*
 20 *Inc., Marketing, Sales Practices*, No. 3:19-md-02913-WHO, Dkt. 370 (N.D. Cal. Feb. 14, 2020)
 21 (staying adjudication of motions to remand pending further proceedings); *see also id.*, Dkt. 368
 22 (joint proposal of the parties that, with eight remand motions pending, "the Court defer
 23 addressing these motions until there is a critical mass"). Here, the *Youngers* motion is the only
 24 remand motion currently pending in this MDL, and resolution of that motion would have little
 25

26 ³ Defendants' removal petition was not "improper," as Plaintiffs assert. Instead, it was Plaintiffs
 27 who fraudulently misjoined individual citizens of New Mexico to their state-court complaint
 28 against the Meta and Snap Defendants to defeat diversity. Fraudulent misjoinder is a proper and
 recognized basis for removal. *See Sutton v. Davol, Inc.*, 251 F.R.D. 500, 505 (E.D. Cal. 2008);
Flores-Duenas v. Briones, 2013 WL 6503537, at *24 (D.N.M. Dec. 1, 2013).

1 impact on these proceedings in comparison to the cross-cutting issues yet to be resolved. It would
 2 be inefficient for this Court to devote its limited resources now to resolving a motion affecting
 3 only one case, when hundreds of pages of briefing on cross-cutting issues are already pending
 4 before the Court. Resolution of those cross-cutting issues would also help advance the Youngers
 5 case insofar as that case raises those same cross-cutting issues (which it does). Defendants
 6 therefore propose that the Court deny the *Younger* Plaintiffs' request for leave to re-file their
 7 motion, without prejudice to later renewing that motion at a more appropriate time.

8 DATED: January 19, 2024

9 Respectfully submitted,

10 /s/ Lexi J. Hazam

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ATTESTATION

I, Lexi J. Hzam, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: January 19, 2024

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